satisfied that the explanation offered by the accused is "untrue".

Mr. Hepworth intimated that he did not wish to go into the merits of this case. That being so, we make no order on this Reference, and the order made by Abbott, J. will, therefore, stand.

No order.

K. P. Y. ISMAIL v. S. SINNIAH.

[Orig. Civ. Juris. (Abbott, J.) April 30, 1951]

[Malacca — Civil Suit No. 81 of 1950]

Courts Ordinance (1948) s. 5(2) — Service of Summons — Summons may be served anywhere within the Federation — Rules of the Supreme Court Order 11 Rule 1.

This was an application to have a writ of summons dismissed on the ground that the writ, which was issued in the Settlement of Malacca, was served in the State of Johore. Reliance was placed upon Order 11 Rule 1 of the Rules of the Supreme Court (Straits Settlements) which provides that a writ should not be served outside the limits of the settlement without the prior sanction of the Court.

Held, that Section 5(2) of the Courts Ordinance gave power to serve the summons anywhere within the Federation of Malaya and therefore the application must be dismissed.

CIVIL SUIT.

S. Shunmugam for the plaintiff.

C. S. Jayaswal for the defendant.

Abbott, J. : — The first two grounds of the application have not been pursued and only the third ground remains for determination.

The plaintiff has commenced proceedings against the defendant upon a writ issued out of the High Court in the Settlement of Malacca. The plaintiff lives in Malacca and the cause of action appears to have arisen in Malacca; the defendant resides in the State of Johore and the writ was served upon him there. Application is now made that the action be dismissed on the ground that the writ was served upon the defendant outside the limits of the Settlement without the prior sanction of the Court as provided for in Order 11 rule 1 of the Rules of the Supreme Court (Straits Settlements), 1934. These rules were made under the authority of the Court Ordinance, (Cap. 10) of the Laws of the Straits Settlements. Following upon the Federation of Malaya Order in Council, 1948, the Settlement of Malacca became part of the Federation of Malaya, but Cap. 10 of the Laws of the Straits Settlements continued to be the valid law of the Settlement until it was repealed and replaced by the Courts Ordinance, No. 43 of 1948. This last-named enactment applies in respect of the whole of the Federation of Malaya and contains a sub-section, material to the present application, as follows :—

> 5(2). All summonses . . . . and other processes whatsoever, whether civil or criminal, issued . . . by the authority of any Court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served . . . anywhere within the Federation."

The Straits Settlements' Rules of Court, however, remain operative within the Settlement of Malacca by virtue of section 110(3) of the Courts Ordinance, 1948, because they have not been revoked and replaced; but the operation of rule 1 of Order 11 has been restricted by the express provisions of the sub-section set out above. I can see no inconsistency or conflict between the rule and the sub-section. It is clear that the intention of the present Courts Ordinance was to confer a jurisdiction throughout the Federation of Malaya; rule 1 of Order 11 has become restricted insofar as it now requires the sanction of the Court only where service is sought to be effected upon a person outside the boundaries of the Federation of Malaya, of which the Settlement of Malacca is now a part.

The application is dismissed with costs.

WOON SIAK v. LIM THIAN CHEE.

[App. Civ. Juris. (Paul Storr, J.) May 5, 1951]

[J. B. — Rent Assessment Board Application No. 13 of 1950]

Control of Rent Ordinance 1948 s. 13(1)(d) — Whether notice to quit is essential before application is made for possession.

This was a reference made by the Johore Bahru Rent Assessment Board which raised the question whether a notice to quit was necessary before an application for recovery of possession under Section 13(1)(d) of the Control of Rent Ordinance 1948 is made. Counsel for the applicant submitted that no notice to quit was necessary as the application was based on the allegation of a nuisance or persistent annoyance caused by the respondent to the wife of the applicant and he submitted that the committing of the nuisance was a breach of the implied condition of the tenancy and therefore it was not necessary to serve a notice to quit to determine the tenancy. Counsel for the respondent relied on Section 13(3) of the Control of Rent Ordinance and argued that it was obligatory on the applicant first to serve a notice to quit determining the tenancy.

Held, that on the facts of this particular case a notice to quit was not necessary before bringing the application for possession under Section 13(1)(d) of the Control of Rent Ordinance.

RENT ASSESSMENT BOARD APPLICATION.

P. V. Charry for the applicant.

M. Ismail for the respondent.